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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 MMJK, Inc.,

12 Plaintiff,

13 vs.

14 ULTIMATE BLACKJACK TOUR, LLC

15 Defendant.
16
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CASE NO. C 3:07-CV-03236-BZ

**OBJECTIONS OF DEFENDANT
ULTIMATE BLACKJACK TOUR, LLC
TO EVIDENCE PROFFERED BY
PLAINTIFF MMJK, INC.**

**[Filed Concurrently with Defendant's
Opposition to Preliminary Injunction;
Declaration of L. Kenneth Rosenthal,
Declaration of Sanford I. Millar and
Affidavit of Paul Forrest Hickman]**

18 DATE: August 15, 2007

19 TIME: 10:00 a.m.

LOCATION: Courtroom G

20 JUDGE: Hon. Bernard Zimmerman
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Defendant Ultimate Blackjack Tour, LLC ("UBT") hereby objects to the evidence proffered by Plaintiff MMJK, Inc. ("MMJK") in support of its motion for preliminary injunction as follows:

OBJECTIONS TO DECLARATION OF JASON KELLERMAN

1. UBT objects to the following sentence on page 2, lines 1 through 4:

"A few months earlier, I also learned that UBT was aware of our Web site and patent (prior to the time it began hosting online tournaments that pay out prizes of immediate value and require entrants to either pay a subscription fee or utilize an 'alternative means of entry' to enter)."

The grounds for this objection are lack of foundation for personal knowledge and hearsay. Federal Rules of Evidence, Rules 104 and 802.

Sustained: _____ **Overruled:** _____

2. UBT objects to paragraph 5 at lines 7 through 10 on page 2 which states:

"The continued operation of UBT's Web site will irreparably harm MMJK's business. The availability of UBT's infringing service leads to a loss of market share for our services at www.betzip.com. UBT's continuing infringement is attracting new players to its Web sites that would otherwise play at our Web site."

The grounds for this objection are lack of foundation for personal knowledge and impermissible opinion testimony by a lay witness. Federal rules of Evidence 104 and 701.

Sustained: _____ **Overruled:** _____

3. UBT objects to the following sentences on page 2, lines 15 through 20:

"This law did not apply to the services provided by us at www.betzip.com as it is not a gambling site because it offers a free alternative method of entry into the tournaments offered on our Web site other than through subscriptions only. The result of the passage of the UIGEA is that millions of U.S. Consumers are now looking for alternative places to play

1 online poker, and I believe www.betzip.com is their only legal option (in
 2 terms of a subscription-based service that offers tournaments that pay out
 3 prizes of immediate value.)”

4 The grounds for this objection are lack of foundation for personal knowledge and impermissible
 5 opinion testimony by a lay witness. Federal Rules of Evidence 104 and 701.

6 **Sustained:** _____ **Overruled:** _____

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 8 4. UBT objects to the following sentences on page 2 lines 22 through 25:
 9 “MMJK will not have the same opportunity to capture market share lost to
 10 UBT once the market matures. Indeed, it is well known in this industry
 11 that if a provider of online gaming services reaches a point of ‘critical
 12 mass’ in terms of numbers of customers, it is nearly impossible for other
 13 providers to achieve comparable market shares.”

14 The grounds for this objection are lack of foundation for personal knowledge, impermissible
 15 opinion testimony from a lay witness and hearsay. Federal Rules of Evidence 104, 701 and 802.

16 **Sustained:** _____ **Overruled:** _____

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 18 5. UBT objects to the following sentence at lines 15 through 17 of page 3:
 19 “If UBT were able to leverage these assets to achieve critical mass before
 20 MMJK does, it would irreparably harm out business.”

21 The grounds for this objection are no foundation for personal knowledge and impermissible
 22 opinion testimony from a lay witness. Federal Rules of Evidence 104 and 701.

23 **Sustained:** _____ **Overruled:** _____

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 25 6. UBT objects to the following at page 3, lines 19 - 23:
 26 “These deals have the potential to drive large numbers of customers to our
 27 business. If UBT were to secure one or more of these deals (instead of
 28 MMJK securing these deals), it would irreparably harm our business.

1 UBT's mere presence in these discussions could result in unfavorable
2 economics for us were we to secure the deals. It is our understanding that
3 UBT has been actively pursuing one or more of these deals."

4 The grounds for this objection are no foundation for personal knowledge, impermissible opinion
5 testimony from a lay witness and hearsay. Federal Rules of Evidence, 104, 701 and 802.

6 **Sustained:** _____ **Overruled:** _____

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8 7. UBT objects to the following at page 3, lines 26 through page 4, line 1.
9 "Since MMJK is a relatively new company with only one primary service,
10 loss of market share and of customer base as a result of infringement
11 cause (sic) severe injury to MMJK, which cannot be remedied by
12 monetary damages."

13 The grounds for this objection are no foundation for personal knowledge, impermissible opinion
14 testimony from a lay witness and hearsay. Federal Rules of Evidence, 104, 701 and 802.

15 **Sustained:** _____ **Overruled:** _____

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17 DATED: July 25, 2007

GREENBERG TRAURIG, LLP

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19 By: _____/S/
20 MATTHEW S. STEINBERG
21 Attorneys for Defendant
22 Ultimate Blackjack Tour, LLC
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CERTIFICATE OF SERVICE

I, hereby certify that on July 25, 2007, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to the e-mail addresses denoted below:

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